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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CHERYL BUSTAMANTE,

Plaintiff,

vs.

EUGENE BURGER MANAGEMENT  
CORPORATION, a California Corporation;  
EUGENE BURGER MANAGEMENT  
CORPORATION OF NEVADA, a Nevada  
Corporation,

Defendant.

Case No.: 2:12-cv-2158-JCM-VCF

**JOINT EMERGENCY MOTION FOR EXTENSION OF DISCOVERY**

Eugene Burger Management Corporation and Eugene Burger Management Corporation of Nevada (collectively "EBMC"), by and through its attorney of record, Nick D. Crosby, Esq. with the law firm of Marquis Aurbach Coffing, and Cheryl Bustamante ("Plaintiff"), by and through her attorney of Record, Michael Balaban, hereby file their Joint Emergency Motion for Extension of Discovery.

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1 This Motion is made and based upon the attached Memorandum of Points and  
2 Authorities, the Affidavit of Nick D. Crosby, Esq., all papers and pleadings on file herein, and  
3 any oral argument allowed at the time of the hearing.

4 Dated this 23rd day of December, 2013.

5 MARQUIS AURBACH COFFING

6  
7 By /s/ Nick D. Crosby, Esq.  
8 Nick D. Crosby, Esq.  
9 Nevada Bar No. 8996  
10 10001 Park Run Drive  
11 Las Vegas, Nevada 89145  
12 Attorney for Defendant

13 LAW OFFICES OF MICHAEL P. BALABAN

14 By /s/ Michael P. Balaban  
15 Michael P. Balaban  
16 Nevada Bar No. 9370  
17 10726 Del Rudini Street  
18 Las Vegas, Nevada 89141  
19 Attorney for Plaintiff

20 **AFFIDAVIT OF NICK D. CROSBY, ESQ.**

21 STATE OF NEVADA )  
22 )  
23 ) ss:  
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28 )  
COUNTY OF CLARK )

Nick D. Crosby, Esq., being first duly sworn, deposes and says:

1. I, Nick Crosby, am a shareholder with the law firm of Marquis Aurbach Coffing,  
duly licensed to practice law in all courts of the State of Nevada, and represent Defendants,  
Eugene Burger Management Corporation and Eugene Burger Management Corporation of  
Nevada (collectively "EBMC"), in United States District Court, District of Nevada Case No.  
2:12-cv-2158-JCM-VCF. This Affidavit is made of my own personal knowledge except when  
made upon information and belief, and as to those matters, I believe them to be true and, if called  
as a witness, would competently testify in a court of law thereto.

2. The Parties have been diligent in completing written discovery in this matter and are in the process of coordinating depositions of the parties and witnesses.

3. The Plaintiff noticed the depositions of Katherine Wolfe and Nancy Hoyer for December 26, 2013. However, Nancy Hoyer is no longer employed by EBMC and Katherine Wolfe is not available until after December 29, 2013.

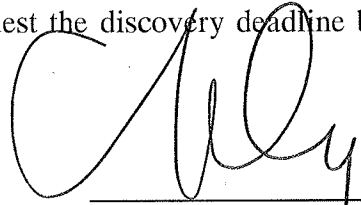
4. The deadline to complete discovery in this matter is December 29, 2013.

5. On Thursday December 19, 2013, the undersigned spoke with Plaintiff's counsel and discussed stipulating to move the Court for a very brief extension of the discovery deadline, such that the parties can take depositions.

6. Given the fact discovery closes on December 29, 2013 and the witnesses are unavailable for the December 26, 2013 depositions, good cause exists to extend the discovery deadline for the sole purpose of taking depositions.

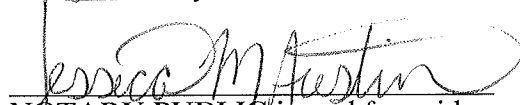
7. The parties believe a 45 day extension of time will be sufficient to complete the intended depositions and, as such, respectfully request the discovery deadline be extend by 30 days for the sole purpose of completing depositions.

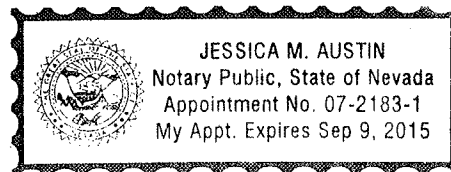
Dated this 28<sup>th</sup> day of December, 2013.



NICK D. CROSBY, ESQ.

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of December, 2013.

  
NOTARY PUBLIC in and for said County and State



### MEMORANDUM OF POINTS AND AUTHORITIES

#### I. INTRODUCTION

Pursuant to LR 26-4, the Parties hereby request this Court extend the discovery deadline 45 days. The parties are experiencing difficulties scheduling depositions within the current discovery deadline, but are working together to secure dates in the immediate future to complete the same.

**II. STATEMENT OF FACTS**

The Plaintiff filed a lawsuit against EMBC alleging unlawful disability discrimination. The Defendants deny the allegations and maintain that the decision to terminate the Plaintiff was based upon legitimate, non-discriminatory reasons.

**A. DISCOVERY COMPLETED.**

The parties have completed written discovery, including responses to interrogatories, request for admissions and responses to request for the production of documents.

**B. DESCRIPTION OF DISCOVERY THAT REMAINS TO BE COMPLETED.**

The Plaintiff intends to take the deposition of Katherine Wolfe and Nancy Hoyer. EBMC intends to take the deposition of the Plaintiff.

**C. THE REASONS WHY DISCOVERY WAS NOT COMPLETED WITHIN THE TIME LIMITS SET BY THE DISCOVERY PLAN.**

The parties diligently completed written discovery and were in the process of coordinating depositions. The Plaintiff noticed the deposition of Katherine Wolfe and Nancy Hoyer for December 26, 2013, but Wolfe is not available until after December 29, 2013 and Hoyer no longer is employed by EBMC. Further, given the fact the deadline to complete discovery fell on the Monday following Christmas, the parties experienced further difficulty scheduling the aforementioned depositions.

The Parties request a brief, 45 day, extension of discovery for the sole purpose of taking depositions. The request is not for purposes of delay and, instead, is necessary to accommodate witnesses and counsels' schedules.

**D. PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY.**

**1. Discovery Cut-Off**

The discovery cut-off shall be extended from December 29, 2013 to February 12, 2014.

**2. Amending the Pleadings and Adding Parties**

The Parties agree that the deadline to amend pleadings and add new parties has passed.

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3. **The Deadline to File Motions or Stipulations to Extend Discovery.**

The Parties in good faith believe that no further requests will be needed or requested.

4. **Expert Disclosure**

The Parties agree that the deadline to name experts has passed.

5. **Dispositive Motions**

In accordance with Local Rule 26-1(e)(4), the last day for filing dispositive motions including, but not limited to motions for summary judgment, shall be **March 14, 2014**.

6. **Pre-Trial Order**

In accordance with Local Rule 26-1(e)(5), the last day to file a Joint Pre-Trial Order, including any disclosures pursuant to FRCP 26(a)(3), shall be **April 14, 2014**. In the event dispositive motions are filed, the date for filing the Joint Pre-Trial Order shall be suspended until thirty (30) days after the decision on the dispositive motions or upon further order by the Court extending the time period in which to file the Joint Pre-Trial Order.

**III. LEGAL ARGUMENT**

LR 6-1 states:

...

(b) Every motion or stipulation to extend time shall inform the court of any previous extensions granted and state the reasons for the extension requested. A request made after the expiration of the specified period shall not be granted unless the moving party, attorney, or other person demonstrates that the failure to act was the result of excusable neglect. Immediately below the title of such motion or stipulation there shall also be included a statement indicating whether it is the first, second, third, etc., requested extension, i.e.

In this case, the Parties have been diligent in completing discovery, but have encountered difficulty in scheduling and completing witness and party depositions. The discovery deadline falls on the Monday after the Christmas holiday and, as a result, one of the witnesses is not available until after the close of discovery. Further, another witness, Nancy Hoyer, is no longer employed by EBMC. As such, the Parties request a very brief extension of the discovery deadline to complete the depositions.

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LR 26-4 states:

Applications to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR 6-1, be supported by a showing of good cause for the extension. All motions or stipulations to extend discovery shall be received by the court within twenty (20) days before the discovery cut-off date or any extension thereof. Any motion or stipulation to extend or to reopen discovery shall include:

- (a) A statement specifying the discovery completed;
- (b) A specific description of the discovery that remains to be completed;
- (c) The reasons why discovery remaining was not completed within the time limits set by the discovery plan; and
- (d) A proposed schedule for completing all remaining discovery.

The Parties have good cause for the extension, as they have diligently conducted discovery in this matter. The requested extension is not sought for purpose of delay and, instead, is requested to accommodate the parties, witnesses and counsel in scheduling and taking depositions. Pursuant to LR 26-4, the Parties request the Court grant this Motion and extend discovery by 45 days for the sole purpose of completing depositions.

#### IV. CONCLUSION

Pursuant to LR 6-1 and 26-4, and good cause existing to extend the discovery deadlines, the Parties request the above proposed discovery schedule be granted to allow the Parties to complete the remaining discovery.

Dated this 23rd day of December, 2013.

MARQUIS AURBACH COFFING

LAW OFFICES OF MICHAEL P. BALABAN

By /s/ Nick D. Crosby, Esq.  
 Nick D. Crosby, Esq.  
 Nevada Bar No. 8996  
 10001 Park Run Drive  
 Las Vegas, Nevada 89145  
 Attorney(s) for Defendants

By /s/ Michael P. Balaban  
 Michael P. Balaban  
 Nevada Bar No. 9370  
 10726 Del Rudini Street  
 Las Vegas, Nevada 89141  
 Attorney for Plaintiff

IT IS HEREBY ORDERED that the Joint Emergency Motion for Extension of Discovery is GRANTED.

**IT IS SO ORDERED.**



**UNITED STATES MAGISTRATE JUDGE**  
**DATED:** 12-26-2013